

# PPM 421

## ELIGIBILITY DETERMINATION

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### ***GENERAL REQUIREMENTS***

#### **421.01 REQUIREMENT TO MAKE AN ELIGIBILITY OR INELIGIBILITY DETERMINATION**

The completed assessment for determining eligibility and priority for services conducted in accordance with PPM chapter 420 must result in a determination regarding whether each applicant is eligible or ineligible for vocational rehabilitation services, as described in this chapter.

#### **421.02 PURPOSE OF THE ELIGIBILITY OR INELIGIBILITY DETERMINATION**

An eligibility determination is required as a prerequisite to the receipt of Vocational Rehabilitation Program services as an eligible program participant and is also required as a prerequisite to closing the record of services for individuals who do not meet the basic eligibility requirements for program participation.

#### **421.03 TIMELINESS REQUIREMENTS**

(1) Once an individual has submitted a valid application for vocational rehabilitation services meeting the requirements of PPM 410.11, the Vocational Rehabilitation Counselor must make the required determination

of eligibility or ineligibility within 60 calendar days of the date of application, unless:

(A) the individual declines services or further services, or becomes otherwise unavailable for vocational rehabilitation services prior to a determination of eligibility or ineligibility;

(B) exceptional and unforeseen circumstances beyond the control of the Vocational Rehabilitation Program preclude making an eligibility or ineligibility determination within 60 calendar days and the individual (or the individual's representative) and the Vocational Rehabilitation Counselor agree to an extension of time of specified duration to complete the determination; or

(C) the individual is determined to be an individual with a most significant disability in accordance with PPM chapter 422, and his or her ability to benefit in terms of an employment outcome from vocational rehabilitation services cannot be presumed due to the significance (severity) of the disability and requires a more thorough assessment through the provision of trial work experiences and/or an extended evaluation.

*[REQUIRED PRACTICE. (1) With respect to paragraph (1)(A) of this section, an individual may decline services or further services at any time and may exit the program as unavailable for services without an eligibility or ineligibility determination having been made if he or she: (A) is deceased; (B) is no longer present in the state or cannot be located; (C) is institutionalized in a hospital, nursing home, or other health care facility, is imprisoned, or is admitted to any other type of institution under conditions which preclude completion of the assessment or program participation for an extended period of time); (D) is transferred to another agency for more appropriate services; (E) has failed to cooperate, to the extent that an eligibility or ineligibility determination cannot be made; or (F) has expressed a desire not to participate.*

*(2) For purposes of paragraph (1)(B) of this section, "exceptional and unforeseen circumstances beyond the control of the Vocational Rehabilitation Program" is understood to mean: (A) a condition or occurrence arising from the individual's disability (such as a sudden exacerbation) that results in hospitalization or which otherwise renders the individual temporarily unavailable or unable to participate in the assessment process or vocational rehabilitation services; or (B) any other action or inaction of the applicant or the individual's representative (such as failure to meet necessary appointments, as scheduled) that causes a significant interruption or an inability to complete the assessment process. Situations such as those described in the latter*

*case do not include conditions arising with the Vocational Rehabilitation Program or Vocational Rehabilitation Counselor (such as Counselor caseload size, failure to act in a timely manner on information or documentation received, and similar delays) and do not qualify as reasons to extend the assessment period, with or without the agreement of the individual or the individual's representative.*

*(3) Any extension made in accordance with PPM 421.03(1)(B) must be for a specified period of time, and must be documented in the individual's record of services by a case note, dated and initialed by both the individual (or representative) and the Counselor, describing: (A) the reason for the extension; (B) the specific length of time agreed to for the extension; and (C) the approval of both the applicant (or the individual's representative) and the Vocational Rehabilitation Counselor for the extension.]*

(2) Regardless of the 60-day timeliness requirement allowed as a maximum under paragraph (1) of this section, the required determination must be made as soon as possible for each applicant, but not more than 10 business days following the Counselor's receipt of the information and documentation necessary to complete the determination.

*[REQUIRED PRACTICE. While up to 60 calendar days is permitted without an extension and a longer period is allowed when an extension is needed, appropriate, and agreed to or when trial work experiences or an extended evaluation is necessary, the Vocational Rehabilitation Counselor is nevertheless required by paragraph (2) of this section to complete the assessment and make an eligibility or ineligibility determination as soon as possible for each applicant, in order to assure that access to the full range of vocational rehabilitation services is expedited for those individuals who are determined to be eligible.]*

#### **421.04 AUTHORITY FOR MAKING ELIGIBILITY AND INELIGIBILITY DETERMINATIONS**

Each determination of eligibility or ineligibility must be made by a qualified Vocational Rehabilitation Counselor or by another qualified professional employed by the Vocational Rehabilitation Program, and cannot be delegated to any other individual or agency.

***MAKING THE ELIGIBILITY OR INELIGIBILITY DETERMINATION*****421.05 BASIC ELIGIBILITY REQUIREMENTS**

(1) In order to be eligible for Vocational Rehabilitation Program services, the assessment for determining eligibility and priority for services must result in:

(A) a determination by a qualified professional that the individual has a physical or mental impairment; and

(B) a determination by a qualified professional that the physical or mental impairment constitutes or results for the individual in a substantial impediment to employment; and

(C) a determination by a qualified Vocational Rehabilitation Counselor employed by the Vocational Rehabilitation Program that the individual requires vocational rehabilitation services to prepare for, enter or reenter, or maintain employment of the individual's informed choice, consistent with his or her vocational strengths, resources, priorities, concerns, abilities, capabilities, and career interests; and

(D) a presumption, in accordance with section 421.07 of this chapter, that the individual can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(2) Any applicant who fails to meet any of the basic eligibility requirements, or who is deemed by law to be ineligible for services as per section 421.20 of this chapter, must be determined to be ineligible for vocational rehabilitation services, and his or her record of services must be closed in accordance with PPM chapter 480.

*[REQUIRED PRACTICE. Each of the four eligibility requirements must be applied in the sequence specified in paragraph (1) of this section, and an ineligibility determination must be made—and further assessment must be terminated— immediately upon the individual's failure to meet any one of the requirements.]*

**421.06 INFORMATION USED FOR THE ELIGIBILITY OR INELIGIBILITY DETERMINATION**

Each eligibility or ineligibility determination must be based on the information obtained or generated for the assessment for determining eligibility and priority for services, as described in PPM chapter 420 and (to the extent required) on additional information obtained in accordance with the provisions of this chapter, including information obtained from the provision of trial work experiences or an extended evaluation.

**421.07 PRESUMPTION OF ABILITY TO BENEFIT****(1) PRESUMPTION**

All individuals with disabilities—including individuals with the most significant disabilities—are presumed to be capable of engaging in gainful employment, if necessary supports are provided. If the assessment for determining eligibility and priority for services establishes the presence of a physical or mental impairment, a substantial impediment to employment, and the necessity of vocational rehabilitation services for the individual's achievement of an employment outcome (i.e., that the individual has met the first three eligibility requirements described in section 421.05(1)(A), (B), and (C) of this chapter), it must, therefore, be presumed that the individual is also able to benefit in terms of an employment outcome, satisfies the requirement of PPM 421.05(1)(D), and is eligible, unless the presumption can be successfully refuted, in accordance with paragraph (2) of this section.

*[REQUIRED PRACTICE. See also section 421.20 of this chapter with regard to the ineligibility of individuals with certain conditions and disorders.]*

**(2) REFUTATION OF THE PRESUMPTION**

For applicants determined to be individuals with most significant disabilities, the presumption of ability to benefit in terms of an employment outcome from the provision of vocational rehabilitation services can be refuted only if the Vocational Rehabilitation Counselor demonstrates by clear and convincing evidence obtained through trial work experiences or an

extended evaluation that the applicant is incapable of achieving an employment outcome due to the significance (severity) of the disability.

*[REQUIRED PRACTICE. (1) If the Vocational Rehabilitation Counselor is to challenge the ability to benefit presumption on the basis that an individual is so significantly disabled as to preclude the ability to benefit, the individual must first be determined to be an individual with a most significant disability, as described in PPM chapter 422.*

*(2) For the purposes of the Vocational Rehabilitation Program, “clear and convincing evidence” means information that is of sufficient scope and clarity to demonstrate conclusively. In accordance with federal program policy:*

*The term clear means unequivocal. . . . A review of existing information generally would not provide clear and convincing evidence. . . . Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual’s needs due to the severity of the individual’s disability. The demonstration of “clear and convincing evidence” must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d Sess., 37-38 (1992))]*

## **421.08 PRESUMPTION OF ELIGIBILITY FOR ALLOWED SOCIAL SECURITY BENEFICIARIES AND RECIPIENTS**

### **(1) PRESUMPTION**

Unless the ability of the individual to benefit in terms of an employment outcome can be refuted on the basis that the individual is incapable of benefiting due to the significance of his or her disability, any applicant who is currently an allowed Social Security Disability Insurance (SSDI) beneficiary and/or an allowed Supplemental Security Income (SSI) recipient by reason of blindness or other disability pursuant to Title II and/or Title XVI of the Social Security Act (42 USC 401, *et seq.* and 1381, *et seq.*) as amended, and who intends to achieve an employment outcome, must be:

(A) presumed to meet all of the eligibility criteria under section 421.05(1) of this chapter and to be eligible for vocational rehabilitation services; and

(B) considered to be an individual with a significant disability (or, if appropriate, an individual with a most significant disability) for purposes of Vocational Rehabilitation Program participation.

*[REQUIRED PRACTICE. See also section 421.20 of this chapter with regard to the ineligibility of individuals with certain conditions and disorders.]*

## (2) DEMONSTRATION OF BENEFICIARY AND RECIPIENT STATUSES

For purposes of meeting the requirements of paragraph (1) of this section, the allowed status of each applicant receiving SSDI and/or blind/disabled SSI benefits must be established by appropriate documentation. If an applicant for vocational rehabilitation services asserts that he or she is an allowed beneficiary and/or recipient (and is presumptively eligible for vocational rehabilitation services), but is unable to provide appropriate documentation to establish his or her beneficiary and/or recipient status, the Vocational Rehabilitation Counselor must verify the applicant's eligibility under Title II or Title XVI of the Social Security Act by obtaining verification from the Social Security Administration. The required verification must be secured as soon as possible, but within a reasonable period of time that enables the Counselor to meet the timeliness requirements described in section 421.03 of this chapter.

*[REQUIRED PRACTICE. (1) The presumption of eligibility is extended only to individuals who are allowed beneficiaries or recipients receiving SSDI and/or blind/disabled SSI benefits at the time of the assessment for determining eligibility and priority for services. The presumption is not accorded to any other individuals, including individuals who have applied for Social Security benefits, have a benefit eligibility determination pending, and may be deemed likely to be allowed, but are not yet allowed, or individuals receiving Social Security benefits under programs other than the Title II and Title XVI SSDI and/or SSI blind/disabled programs.*

*(2) The fact that an applicant's Social Security beneficiary/recipient status has been "diaried" for review by the Social Security Administration because there is evidence that the individual's physical or mental impairment may substantially improve does not negate the presumption of eligibility for vocational rehabilitation services for any individual currently allowed and entitled to receive benefits.*

*(3) In the case of SSI recipients, the required verification obtained must demonstrate that the individual is receiving SSI benefits due to blindness or other disability; not for any other qualifying reason.*



*(4) An applicant can demonstrate his or her allowed SSDI or blind/disabled SSI status by the presentation to the Vocational Rehabilitation Counselor of corroborating documentation, such as a Social Security check, a current award letter, or a Ticket To Work. If such documentation cannot be provided by the applicant or the individual's representative, the Counselor must secure verification of the individual's beneficiary and/or recipient status by obtaining a written report or oral verification from authoritative Social Security Administration sources. Written verification reports must be incorporated into the record of services for the individual. Orally obtained verifications must be documented in the record of services by dated and initialed case note entries which identify the contact individual and his or her position and the information verified.]*

### (3) REFUTATION OF THE PRESUMPTION

The presumption of eligibility for an individual who is an allowed Social Security SSDI beneficiary and/or blind/disabled SSI recipient who intends to work and has been determined to be an individual with a most significant disability can be refuted only if the Vocational Rehabilitation Counselor demonstrates by clear and convincing evidence obtained through trial work experiences or an extended evaluation that the individual is incapable of achieving an employment outcome due to the significance of his or her disability.

*[REQUIRED PRACTICE. If the Vocational Rehabilitation Counselor is to challenge the presumption of eligibility on the basis that an individual is so significantly disabled as to preclude the ability to benefit, the individual must first be determined to be an individual with a most significant disability, as described in PPM chapter 422.]*

### (4) NON-ENTITLEMENT

The presumption of eligibility accorded to Social Security beneficiaries and recipients by this section is not to be construed as an entitlement for any individual or group of individuals to any specific vocational rehabilitation service or services.

## **421.09 INTENT TO ACHIEVE AN EMPLOYMENT OUTCOME**

All eligible individuals—including individuals whose eligibility for vocational rehabilitation services is based on their being allowed Social Security beneficiaries or recipients—must intend to achieve an employment

outcome in an integrated work setting to qualify for vocational rehabilitation services.

*[REQUIRED PRACTICE. In assessing an applicant's intent to achieve an employment outcome, the individual's completion of the application process for vocational rehabilitation services following the notifications described in PPM 410.17 must be considered sufficient evidence of intent, and the Vocational Rehabilitation Counselor can require no additional demonstration on the part of the applicant for the purpose of satisfying this section.]*

#### **421.10 SHELTERED WORK REFERRAL**

(1) Work in sheltered (non-integrated) settings is not a valid employment outcome for purposes of the Vocational Rehabilitation Program, and vocational rehabilitation services can be provided for individuals in sheltered work only to extent that services are required to assist the individual in transitioning out of sheltered work and into integrated employment. If the individual has chosen to pursue or remain in sheltered work, or is determined to be capable only of sheltered work, no vocational rehabilitation services can be provided for the purpose of preparing for, entering or reentering, or maintaining the sheltered work goal, and the Vocational Rehabilitation Counselor must, as appropriate for each individual:

(A) refer the individual to (or back to) local sheltered employment providers; and

(B) if applicable, close the individual's record of services, using the appropriate closure status and reason for closure, as described in PPM chapter 480.

(2) Before making the referral and closure described in paragraph (1) of this section, however, the Counselor must:

(A) explain to the individual that the purpose of the vocational rehabilitation is to enable individuals with disabilities to achieve employment in integrated settings;

(B) provide the individual with information concerning the availability of employment options and vocational rehabilitation services in integrated settings;

(C) inform the individual that vocational rehabilitation services can be provided to eligible individuals in a sheltered setting only for the purpose of training or otherwise preparing the individual to seek and secure employment in an integrated setting and to move from work in a sheltered setting to work in an integrated setting;

(D) inform the individual that he or she may reapply for vocational rehabilitation services at a later date if, at that time, he or she chooses to pursue employment in an integrated setting; and

(E) refer the individual, as appropriate, to the Social Security Administration for information concerning the ability of individuals with disabilities to work while receiving benefits from the Social Security Administration.

(3) The referral described in paragraph (1)(A) of this section must provide, as appropriate for the individual being referred:

(A) a notice of referral for the local sheltered employment provider to which the individual is being referred;

(B) information identifying a specific point of contact within the agency to which referral is made;

(C) information and advice regarding the employment services available to the individual from the provider that are likely to be most suitable for assisting the individual to prepare for, secure or regain, and maintain employment; and

(D) referral to other federal and state programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of the individual.

**421.11 PROHIBITED FACTORS****(1) NONDISCRIMINATION REQUIREMENT**

Each determination of eligibility or ineligibility must be made without regard to the individual's age, gender, race, color, creed, national origin, or type of disability, in accordance with the nondiscrimination policy of the program, as described in PPM 110.01.

**(2) DURATION OF RESIDENCY**

The Vocational Rehabilitation Program will impose no duration of residency requirement as a condition of eligibility for any applicant who is present in the state, as described in PPM 110.02.

**(3) OTHER PROHIBITED FACTORS**

The eligibility requirements must also be applied without regard to:

(A) the individual or entity that referred the applicant for vocational rehabilitation services;

(B) the types of services anticipated to be needed by the individual or the expected cost of such services;

(C) the income level of the individual or the individual's family, or their ability or inability to participate financially in meeting the cost of needed services; or

(D) the type of employment outcome expected to be achieved by the individual.

***APPLYING THE BASIC ELIGIBILITY REQUIREMENTS*****421.12 PHYSICAL OR MENTAL IMPAIRMENT**

The determination that the individual has a physical or mental impairment must be based on a review and evaluation of information obtained or

generated for the assessment for determining eligibility and priority for services, including:

(1) current medical or psychological records which provide a diagnosis rendered by a qualified diagnostician in accordance with PPM chapter 453, including—

(A) existing records, to the maximum extent that such records are available, describe the current medical or psychological condition and physical and mental functioning of the individual, and are adequate to make the required determination, or

(B) if existing records are not available, do not describe the current medical or psychological condition and physical and mental functioning of the individual, or are insufficient to make the required determination, vocational rehabilitation diagnostic and evaluation services provided for the purpose of obtaining the necessary diagnosis;

(2) to the extent available, current, and applicable, documented determinations made by qualified professionals of other agencies and programs—particularly determinations regarding the presence of a physical or mental impairment made by the Social Security Administration, education officials responsible for the public education of students with disabilities, or other agencies and programs serving individuals with disabilities (such as the Veterans Administration); or

(3) direct observation by the Vocational Rehabilitation Counselor.

*[REQUIRED PRACTICE. (1) Use of direct Counselor observation to establish the presence of an impairment: (A) presumes that the individual and the Counselor have met in person and interacted, and that the presence of an impairment has been personally confirmed by the Counselor; and (B) is limited to physical conditions that are self-evident and immediately apparent (such as amputation, blindness, speech impediment, and similar conditions). Direct observation cannot be utilized if the applicant and Counselor have not met in person, or to confirm the presence of any mental or behavioral disorder, or a physical condition (like diabetes mellitus, epilepsy, or a similar condition), that is not instantly and consistently observable in a manner that is self-evident, immediately apparent, and unmistakable for any other impairment.*

*(2) If direct Counselor observation is utilized to establish the presence of a physical impairment, an appropriate case note to the individual's record of services is*

*required that describes the observations and the circumstances under which they were made, and a confirming diagnosis must be obtained from a qualified diagnostician prior to IPE development.*

*(3) When direct Counselor observation is the basis for establishing the presence of a physical impairment, it must also be noted that medical, psychological, or other formalized diagnostic and functional evaluations may still be necessary: (A) to make the other determinations required for assessing eligibility; (B) to identify and assess other, co-occurring impairments; and/or (C) to conduct a comprehensive assessment for determining vocational rehabilitation needs.]*

### **421.13 SUBSTANTIAL IMPEDIMENT TO EMPLOYMENT**

The determination that the physical or mental impairment constitutes or results for the individual in a substantial impediment to employment must also be based on a review of information obtained or generated for the assessment for determining eligibility and priority for services, including:

(1) documentation in the form of medical, psychological, and other information which includes an evaluation of the individual's current functioning with respect to work-related abilities and capacities and which are obtained from—

(A) existing records, to the maximum extent that such records are available, describe the current functioning of the individual, and are adequate to make the required determination, or

(B) if existing records are not available, do not describe the current functioning of the individual, or are insufficient to make the required determination, vocational rehabilitation diagnostic and evaluation services (particularly situational assessments) provided for the purpose of obtaining the necessary information;

(2) to the extent available, current, and applicable, documented determinations made by qualified professionals of other agencies and programs regarding the individual's current impediments to employment—particularly determinations regarding the functioning of the individual made by the Social Security Administration, education officials responsible for the public education of students with disabilities, or other agencies and programs serving individuals with disabilities (such as the Veterans Administration);

(3) information provided by the individual or family members of the individual regarding his or her current impediments to employment; and/or

(4) direct observation by the Vocational Rehabilitation Counselor regarding the medical, psychological, vocational, educational, communication, and other functional factors impacting the individual's ability and capacity to prepare for, enter or reenter, perform, and maintain employment.

*[REQUIRED PRACTICE. The presence of a physical or mental impairment does not necessarily result in a substantial impediment to employment (as, for example, when the individual's physical or mental impairment is not significant enough, or is no longer significant enough, to substantially limit his or her employability). If a physical or mental impairment is present but there is no resulting substantial impediment to employment, the individual is not eligible for vocational rehabilitation services. Conversely, an individual may have a substantial impediment to employment for reasons unrelated to any physical or mental impairment (such as when the individual's inability to obtain desirable work exists due to his or her lack of necessary job qualifications, or is attributable to reasons such as the inability to communicate in English, illiteracy, a criminal record, or other cultural or sociological factors unrelated to physical or mental impairment). If the individual has a substantial impediment to employment but the impediment does not result from a physical or mental impairment, he or she is also not eligible for vocational rehabilitation services. To meet the second eligibility requirement, a substantial impediment to employment must be present and attributable to a physical or mental impairment. Each determination of whether or not an individual's physical or mental impairment constitutes or results for the individual in a substantial impediment to employment must be made on an individualized basis, and cannot be assumed based on the impediments typical of people with disabilities in general or characteristic of particular types of disabilities. For example, eligibility cannot be predicated solely on the presence of blindness and an unsubstantiated presumption that the individual necessarily has an impediment to employment resulting from blindness.]*

#### **421.14      REQUIRES VOCATIONAL REHABILITATION SERVICES**

A determination that the individual requires vocational rehabilitation services must be made on the basis that the individual requires at least one available vocational rehabilitation service to prepare for, enter or reenter, or maintain an employment outcome consistent with his or her vocational strengths, resources, priorities, concerns, abilities, capabilities, and career interests, and that the service or services required:

(1) is/are other than, or in addition to—

(A) an assessment for determining eligibility and priority for services, or any service provided for the purpose of such an assessment,

(B) a comprehensive assessment of vocational rehabilitation needs, or any service provided for the purpose of such an assessment,

(C) information and referral services,

(D) any supporting service, including Vocational Rehabilitation Program maintenance, transportation, services to family members, or personal assistance services (interpreting services, reading services, note taking services, or attendant services), and/or

(E) routine case management; and

(2) cannot be obtained by the individual wholly from other available sources, including comparable services and benefits providers.

#### **421.15 ABILITY TO BENEFIT IN TERMS OF AN EMPLOYMENT OUTCOME**

The ability to benefit from vocational rehabilitation services in terms of an employment outcome is a presumption accorded to every individual with a disability who has applied, including applicants with most significant disabilities, and no demonstration of the individual's ability to achieve an employment outcome is necessary or can be imposed as a condition of eligibility, unless:

(1) the presumption of ability to benefit cannot be made, based on the significance (severity) of the individual's disability; and

(2) the Vocational Rehabilitation Counselor determines that trial work experiences or an extended evaluation are required in order to demonstrate whether or not the individual is able to achieve an employment outcome.



**421.16 SERVICE PROVISION REQUIREMENTS**

(1) All vocational rehabilitation services provided in order to determine each individual's eligibility or ineligibility for Vocational Rehabilitation Program participation (including services provided during all trial work experiences and extended evaluations) must include any available vocational rehabilitation services that are necessary for the Vocational Rehabilitation Counselor to make the required determination, but can include only those services which are:

(A) appropriate and necessary for making the eligibility determination;

(B) (in the case of services provided during trial work experiences and extended evaluations) in accordance with the individual's trial work experiences or extended evaluation plan, as applicable; and

(C) obtained with the full and prior knowledge, approval, and authorization of the Vocational Rehabilitation Counselor.

*[REQUIRED PRACTICE. With respect to paragraph (1)(C) of this section, costs incurred by an individual for services obtained without the full and prior knowledge, approval, and authorization of the Vocational Rehabilitation Counselor will not be paid for or reimbursed by the Vocational Rehabilitation Program.]*

(2) Each vocational rehabilitation service provided for the purpose of determining an applicant's eligibility or ineligibility for Vocational Rehabilitation Program participation must be provided in accordance with all applicable policies regarding the service and its provision, including, but not limited to, all policies regarding the nature, scope, and duration of service provision, the qualifications and selection of service providers, and fiscal requirements and limitations pertaining to the particular service.

## ***TRIAL WORK EXPERIENCES***

### **421.17 USE OF TRIAL WORK EXPERIENCES**

#### **(1) TRIAL WORK EXPERIENCES REQUIREMENT**

Prior to making any determination that an applicant who is an individual with a most significant disability is incapable of benefiting in terms of an employment outcome from the provision of vocational rehabilitation services due to the significance of the individual's disability as described in section 421.07(2) or 421.08(3) of this chapter, the Vocational Rehabilitation Counselor must provide trial work experiences to explore the individual's abilities, capabilities, and capacity to perform work in realistic work situations in order to determine whether or not there is clear and convincing evidence to support such a determination, unless the applicant is unable to take advantage of trial work experiences or has exhausted his or her trial work experiences opportunities.

*[REQUIRED PRACTICE. Trial work experiences are provided in VR status 04. The record of services must be moved to status 04 from status 02 on the date that a trial work experiences plan is signed by the individual (or the individual's representative) and the Counselor. Upon termination of the trial work experiences, the record of services must be moved from status 04 to status 06, status 08, or status 10, as appropriate.]*

#### **(2) PURPOSE OF TRIAL WORK EXPERIENCES**

Trial work experiences are provided for the sole purpose of determining whether or not the presumption of an applicant's ability to achieve an employment outcome can be refuted by clear and convincing evidence, as described in section 421.07(2) or section 421.08(3) of this chapter, and cannot be provided for any other purpose (such as the exploration of employment options, when the individual's ability to achieve an employment outcome is not in question).

#### **(3) SIGNIFICANCE OF THE DISABILITY**

Because the sole basis for providing trial work experiences is to challenge the presumption of ability to benefit because the individual's disability is perceived to be so significant as to preclude the ability to achieve and

maintain an employment outcome, the individual must first be determined to be an individual with a most significant disability prior to the provision of trial work experiences.

#### **(4) NATURE AND SCOPE OF TRIAL WORK EXPERIENCES**

Trial work experiences may consist of temporary placements in competitive employment, supported employment, on-the-job training (OJT), or any other temporary work opportunities that provide work in realistic, integrated settings consistent with the vocational rehabilitation needs and informed choice of the individual. Trial work experiences must:

(A) be provided under a written trial work experiences plan, agreed to and signed by both the individual (or the individual's representative) and the Vocational Rehabilitation Counselor;

(B) be designed to explore and assess the applicant's abilities, capabilities, and capacities to perform in work situations;

(C) consist of actual or simulated work performed in realistic work settings;

(D) be provided in the most integrated work settings possible, consistent with the vocational rehabilitation needs and informed choice of the applicant;

(E) be of a sufficient number, scope, variety, and duration to determine whether or not there is clear and convincing evidence that the applicant is precluded from achieving an employment outcome due to the significance (severity) of his or her disability; and

(F) provide for the periodic assessment of the individual's job performance during the trial work experiences, to determine whether the clear and convincing evidence required to refute the presumption of ability to benefit can be demonstrated or whether the presumption must stand affirmed.

*[REQUIRED PRACTICE. The trial work experiences plan required per paragraph (4)(A) of this section is not a fully developed Individualized Plan for Employment (IPE), and*

*can include whatever factors the individual and Vocational Rehabilitation Counselor think most likely to demonstrate conclusively that the individual can or cannot achieve an employment outcome. Whatever its content, each trial work experiences plan must be in writing, must be agreed upon and signed by both the individual (or the individual's representative) and the Vocational Rehabilitation Counselor, and must: (1) specify the particular type work trial planned; (2) identify the duration of the work trial; (3) describe the vocational rehabilitation services that will be provided during the work trial to support the individual's work efforts; and (3) describe clearly the specific criteria that must be met in order to conclude that the individual has successfully completed the work trial (including, but not limited to, clearly defined expectations concerning the individual's participation in the work trial as scheduled and his or her adherence to the attendance, punctuality, dress, behavior, and work performance standards applicable to the work site).]*

#### (5) SERVICE PROVISION DURING TRIAL WORK EXPERIENCES

The Vocational Rehabilitation Counselor must assure that, in addition to the trial work experiences themselves, adequate supports and services are made available to the individual (including, but not limited to, family and community supports, transportation and other vocational rehabilitation supporting services, and assistive technology devices and services), to the extent that such supports and services are essential to support his or her trial work efforts.

*[REQUIRED PRACTICE. (1) It is not the purpose of trial work experiences to provide all of the services needed to achieve and maintain an employment outcome. The purpose of trial work experiences is evaluative only, and the Vocational Rehabilitation Counselor must assure that only those services are provided which are necessary to demonstrate the individual's ability or inability to achieve and maintain an employment outcome. Services that require planning and provision over a period of time that exceeds the planned duration of the trial work experiences anticipated, and services of a particularly intensive nature typically provided only for individuals determined to be eligible (ex: vehicle modifications and home modifications), cannot be provided for the purpose of trial work experiences.*

*(2) Services provided during all trial work experiences must be provided consistent with the trial work experiences plan, and with the requirements of section 421.16 of this chapter.]*

#### (6) TERMINATION OF TRIAL WORK EXPERIENCES

Trial work experiences must be terminated, and an eligibility or ineligibility determination must be made, as soon as:

(A) there is a demonstration sufficient to meet the test of clear and convincing evidence that the individual is incapable of achieving and maintaining an employment outcome due to the significance of his or her disability and that the individual is, consequently, ineligible for vocational rehabilitation services; or

(B) the Vocational Rehabilitation Counselor has determined, based on the individual's work performance during the trial work experiences provided, that the individual is capable of achieving and maintaining an employment outcome, and is eligible for vocational rehabilitation services; or

(C) (if trial work experiences have been exhausted without a determination having been made of whether or not there is clear and convincing evidence that the individual's disability is so significant as to preclude his or her ability to achieve and maintain an employment outcome) the Counselor has determined that the individual must be provided with an extended evaluation.

### ***EXTENDED EVALUATION***

#### **421.18 USE OF AN EXTENDED EVALUATION**

##### **(1) EXTENDED EVALUATION REQUIREMENT**

Under limited circumstances (when an applicant is unable to take advantage of trial work experiences or when available options for trial work experiences have been exhausted without a determination having been made of whether or not there is clear and convincing evidence that the individual's disability is so significant as to preclude his or her ability to achieve and maintain an employment outcome), the Counselor must conduct an extended evaluation in order to make the required determination based on the individual's observed ability to benefit from the provision of appropriate vocational rehabilitation services.

*[REQUIRED PRACTICE. Extended evaluations are provided in VR status 06. The record of services must be moved to status 06 from status 02 or status 04 on the date that an extended evaluation plan is signed by the individual (or the individual's representative) and the Counselor. Upon termination of the extended evaluation, the*

*record of services must be moved from status 06 to status 08 or status 10, as appropriate.*

*An applicant may participate in trial work experiences only, an extended evaluation only, or trial work experiences followed by an extended evaluation (in the limited circumstances described in paragraph (1) of this section).]*

## (2) PURPOSE OF AN EXTENDED EVALUATION

Like trial work experiences, an extended evaluation is provided for the sole purpose of determining whether or not the presumption of an applicant's ability to benefit in terms of an employment outcome from the provision of vocational rehabilitation services can be refuted by clear and convincing evidence, as described in section 421.07(2) or section 421.08(3) of this chapter, and cannot be provided for any other purpose (as, for example, to complete an assessment for determining eligibility and priority for services that has not been finished in status 02 within the 60-day timeliness requirement).

## (3) SIGNIFICANCE OF THE DISABILITY

Because the sole basis for providing an extended evaluation is to challenge the presumption of ability to benefit because the individual's disability is perceived to be so significant as to preclude the ability achieve and maintain an employment outcome, the individual must first be determined to be an individual with a most significant disability prior to the provision of extended evaluation services.

## (4) NATURE AND SCOPE OF AN EXTENDED EVALUATION

An extended evaluation must consist of actual vocational rehabilitation services provided for a specified period of time, during which the individual's ability to benefit from the services provided is evaluated. The extended evaluation services utilized must:

(A) be provided under a written extended evaluation plan, agreed to and signed by both the individual (or the individual's representative) and the Vocational Rehabilitation Counselor;

(B) be designed to explore and assess the applicant's abilities, capabilities, and capacities to participate in and derive vocational benefit from the services provided;

(C) consist of actual vocational rehabilitation services consistent with the vocational rehabilitation needs and informed choice of the applicant;

(D) be provided in the most integrated settings possible, consistent with the vocational rehabilitation needs and informed choice of the applicant;

(E) be of sufficient scope, variety, and duration to determine whether or not there is clear and convincing evidence that the applicant is precluded from achieving an employment outcome due to the significance of his or her disability; and

(F) provide for the periodic assessment of the individual's progress during the extended evaluation, to determine whether the clear and convincing evidence required to refute the presumption of ability to benefit can be demonstrated or whether the presumption must stand affirmed.

*[REQUIRED PRACTICE. The extended evaluation plan required per paragraph (4)(A) of this section is not a fully developed Individualized Plan for Employment (IPE), and can include whatever factors the individual and Vocational Rehabilitation Counselor think most likely to demonstrate conclusively that the individual can or cannot achieve an employment outcome. Whatever its content, each extended evaluation plan must be in writing, must be agreed upon and signed by both the individual (or the individual's representative) and the Vocational Rehabilitation Counselor, and must: (1) specify the planned duration of the evaluation; (2) identify the vocational rehabilitation services that will be provided during evaluation; and (3) describe clearly the specific criteria that must be met in order to conclude that the individual is able to benefit vocationally from the services provided (including, but not limited to, clearly defined expectations concerning the individual's participation in the services as scheduled and the criteria to be used to determine his or her vocational benefit and progress).]*

## **(5) SERVICE PROVISION DURING AN EXTENDED EVALUATION**

The Vocational Rehabilitation Counselor must assure that the extended evaluation includes those vocational rehabilitation services (and necessary

Vocational Rehabilitation Program supporting services) required to demonstrate whether or not the individual is capable of benefiting in terms of an employment outcome from the provision of services.

*[REQUIRED PRACTICE. (1) It is not the purpose of an extended evaluation to provide all of the services needed to achieve and maintain an employment outcome. An extended evaluation is evaluative only, and the Vocational Rehabilitation Counselor must assure that only those services are provided which are necessary to demonstrate the individual's ability or inability to achieve and maintain an employment outcome. Services that require planning and provision over a period of time that exceeds the planned duration of the evaluation, and services of a particularly intensive nature typically provided only for individuals determined to be eligible (ex: vehicle modifications, home modifications, or more than one term or semester of postsecondary training), cannot be provided for the purpose of an extended evaluation.*

*(2) Services provided during all extended evaluations must be provided consistent with the extended evaluation plan, and with the requirements of section 421.16 of this chapter.]*

## (6) TERMINATION OF AN EXTENDED EVALUATION

Each extended evaluation must be terminated, and an eligibility or ineligibility determination must be made, as soon as:

(A) there is a demonstration sufficient to meet the test of clear and convincing evidence that the individual is incapable of benefiting from the provision of vocational rehabilitation services in terms of an employment outcome due to the significance of his or her disability and that the individual is, consequently, ineligible for vocational rehabilitation services; or

(B) the Vocational Rehabilitation Counselor has determined, based on the individual's progress during the extended evaluation, that the individual is capable of benefiting from vocational rehabilitation services in terms of achieving and maintaining an employment outcome, and that the individual is eligible for vocational rehabilitation services.



***ELIGIBILITY DETERMINATIONS IN SELECTED CIRCUMSTANCES*****421.19 CONDITIONS NOT CONSTITUTING IMPAIRMENTS**

For purposes of determining eligibility, conditions that impose only a short-term or negligible impediment to employment or none at all (e.g., cold, flu, chronic sinusitis) and conditions that can be corrected by standard medical treatment without residual functional limitation (e.g., tonsillitis, appendicitis, broken bones, and hernia) do not constitute physical or mental impairments for purposes of meeting the first eligibility requirement for vocational rehabilitation services.

**421.20 INELIGIBILITY BASED ON OTHER FACTORS****(1) INDIVIDUALS CURRENTLY ENGAGING IN CHRONIC, DEPENDENT ALCOHOL USE OR THE ILLEGAL USE OF DRUGS**

Individuals currently engaging in chronic, dependent alcohol use or the illegal use of drugs are ineligible for vocational rehabilitation services if:

(A) the individual refuses or fails to participate in or follow through with prescribed treatment; and/or

(B) the individual's frequency and degree of use precludes his or her ability to participate in and derive full benefit from vocational rehabilitation services or successful job placement, job performance, and job retention; and/or

(C) the frequency and degree of use causes the individual to present a direct threat to property or the personal health and safety of self or others.

*[REQUIRED PRACTICE. (1) For the purpose of paragraph (1) of this section, "illegal use of drugs" includes the use of illegal drugs as well as the illegal use of prescription and over-the-counter medications.*

*(2) "Chronic dependent use" is understood to be repetitive, habitual use within a given time frame; not single-instance or intermittent and infrequent use. Relapse is a natural occurrence in the recovery process and does not necessarily render the individual ineligible for program participation; however, an extended, ongoing relapse or*

*multiple instances of relapse within a short period of time typified by any one or more of the conditions described in paragraph (1) of this section are indicative that the individual is not ready to work toward a vocational goal.*

*(3) The Vocational Rehabilitation Counselor has authority under this section to require screenings in order to verify substance abuse and to ascertain the frequency and degree of use, and to require participation in a supervised alcohol or drug rehabilitation program as a condition for the provision of vocational rehabilitation services. Refusal to submit to screening or to enroll and participate in a supervised alcohol or drug rehabilitation program will result in the termination of vocational rehabilitation services and case closure.*

*(4) The Vocational Rehabilitation Program will not provide or pay for alcohol or drug detoxification or treatment services.*

*(5) All decisions regarding the employability of each individual with respect to potential job placement, job performance, and job retention and the threat to property or the health and safety of self or others should be made by the Counselor in consultation with the individual and his or her treatment team, or (if a treatment team is not in place) in consultation with the individual and appropriate medical and other specialists.]*

## **(2) APPLICANTS WHO ARE INDIVIDUALS WHO ARE HARD OF HEARING**

**An applicant who has either a PTA loss of 0 to 39dB in the better ear (unilateral hearing loss) or an unaided speech discrimination score of 70% or better does not have a substantial impediment to employment for purposes of eligibility determination for VR services, unless:**

**(A) the individual has a secondary condition attendant to the hearing loss (e.g., tinnitus, vertigo, auditory recruitment, phonemic regression, or progressive hearing loss) which is verified by an otologist and constitutes or results in a substantial impediment to employment; or**

**(B) the hearing loss itself (with or without other attendant conditions) renders the individual unable to perform specifically identified essential job functions of the planned employment outcome.**

***[REQUIRED PRACTICE. Exceptions based on attendant secondary conditions or essential job functions must be properly documented and have prior administrative approval of the Area Supervisor as to the otologist's verification of***

*the second, qualifying condition or the Counselor's determination of job function relevance.]*

### **(3) INDIVIDUALS WITH ACTIVELY INFECTIOUS DISEASES**

Individuals with actively infectious diseases which require quarantine or restriction of activities to prevent casual transmission (e.g., active tuberculosis) are not eligible for vocational rehabilitation services if the disease constitutes a direct threat to the health or safety of other individuals, or renders the individual unable to participate in and derive full benefit from vocational rehabilitation services or successful job placement, job performance, and job retention.

### **(4) HOMOSEXUALITY AND BISEXUALITY**

Homosexuality and bisexuality are not physical or mental impairments; therefore, if the individual's claim of disability is based on homosexuality or bisexuality, the individual is not an individual with a disability, and is not eligible for vocational rehabilitation services.

### **(5) OTHER SPECIFIED CONDITIONS AND DISORDERS**

An individual is not an individual with a disability for purposes of the Vocational Rehabilitation Program, and is not eligible for vocational rehabilitation services, if the individual's claim of disability is based on:

(A) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(B) compulsive gambling, kleptomania, or pyromania; or

(C) psychoactive substance use disorders resulting from the current illegal use of drugs.

## **421.21 ELIGIBILITY OF FOREIGN NATIONALS**

(1) United States citizenship is not required as a condition of eligibility for vocational rehabilitation services; however, foreign nationals must:

(A) like all other applicants, be present in Indiana in order to apply, consistent with PPM 110.02;

(B) be available to complete the assessment for determining eligibility and priority for services and, subsequently, to complete a program of vocational rehabilitation services; and

(C) under the terms of their immigration and naturalization status, be able to engage in work (achieve an employment outcome) upon completion of vocational rehabilitation services.

(2) Any applicant known to be a foreign national, or whose status is questioned, may be required to present immigration and naturalization documentation, or other appropriate documentation, as verification.

(3) Illegal aliens without recognized legal status who are unable to furnish the required documentation, will not be accepted for vocational rehabilitation services.

#### **421.22 INCARCERATED AND RELEASED CORRECTIONAL SYSTEM INMATES**

(1) An applicant who is an incarcerated or released correctional system inmate but who otherwise meets the eligibility requirements of section 421.05 of this chapter is eligible for vocational rehabilitation services, provided that the individual is present in Indiana consistent with PPM 110.02 and that the length and terms of the applicant's incarceration, parole, or probation permit the individual to:

(A) participate meaningfully in the assessment process for determining eligibility and priority for services and, subsequently, to complete a program of vocational rehabilitation services; and

(B) engage in work (i.e., to achieve an employment outcome) upon completion of vocational rehabilitation services.

(2) If the individual is currently incarcerated, vocational rehabilitation services must be coordinated with the medical, vocational training, and

other services provided by the Indiana Department of Correction. If the individual has been released, coordination of services must occur with his or her parole officer and/or other applicable officials.

### ***CERTIFICATION OF ELIGIBILITY OR INELIGIBILITY***

#### **421.23 ELIGIBILITY AND INELIGIBILITY CERTIFICATIONS**

The Vocational Rehabilitation Counselor must complete a written certification of eligibility or a written certification of ineligibility for each individual for whom an assessment for determining eligibility and priority for services has resulted in a determination that the individual is eligible or ineligible for vocational rehabilitation services. The certification must be signed and dated, and maintained in hard copy in the record of services for the individual. The certification must include:

- (1) a statement that the individual is eligible or ineligible, as applicable, and a description of the bases on which the determination has been made; and
- (2) if the individual has been determined to be eligible for vocational rehabilitation services based on his or her status as an allowed SSDI beneficiary or SSI recipient, an identification of the method used to verify his or her beneficiary or recipient status.

### ***CLOSURE OF THE RECORD OF SERVICES***

#### **421.24 CLOSURE OF THE RECORD OF SERVICES**

If the applicant exits the assessment for determining eligibility and priority for services prior to any determination of eligibility or ineligibility, or a determination has been made that the individual is ineligible for vocational rehabilitation services, the record of services must be closed in accordance with the requirements of PPM chapter 480.

***RECORD OF SERVICES DOCUMENTATION REQUIREMENTS*****421.25 RECORD OF SERVICES CONTENT REQUIREMENTS**

For every individual for whom an eligibility or ineligibility determination has been made, the record of services of the individual must include, as applicable to each individual:

(1) any documentation required with regard to the extension of the timeliness requirement for completing the assessment, in accordance with PPM 421.03;

(2) the medical, psychological, and other records and information on which the determination has been made, as described in PPM 421.06, and case notes describing the conclusions of the Counselor with respect to such documentation;

(3) a description of any clear and convincing evidence obtained or generated by the Vocational Rehabilitation Counselor to refute the presumption of ability to benefit or the presumption of an SSDI beneficiary's or SSI recipient's ability to benefit, as described in PPM 421.07(2) or 421.08(3), respectively;

(4) the means by which verification was secured of the individual's Social Security Disability Insurance (SSDI) beneficiary and/or blind/disabled Supplemental Security Income (SSI) recipient status, as described in PPM 421.08(2);

(5) documentation verifying any referral to sheltered work providers made in accordance with PPM 421.10;

(6) all authorizations, billings, claim-vouchers, or other documentation fiscally required to authorize and make payment for diagnostic and evaluation and other services purchased for the purpose of making an eligibility or ineligibility determination;

(7) any trial work experiences plan written, and case notes describing the periodic reviews conducted during trial work experiences and their outcomes, as required by PPM 421.17(4)(B);

(8) any extended evaluation plan written, and case notes describing the periodic reviews conducted during an extended evaluation and their outcomes, in accordance with PPM 421.18(4)(B);

(9) copies of any documentation obtained regarding any of the conditions and ineligibility determinations described under PPM 421.20, and any documentation obtained under PPM 421.21(2) as verification of immigration and naturalization status or citizenship;

(10) narrative case notes describing the nature, scope, and coordination of services provided for any incarcerated or released correctional system inmate under section 421.22 of this chapter; and

(11) a signed and dated hard copy of the certification statement described in PPM 421.23.

#### **421.26 INFORMATION TECHNOLOGY SYSTEM COMPLIANCE**

All required information, data, and documents must be incorporated and maintained in the record of services for the individual in a manner consistent with Indiana Rehabilitation Information System (IRIS) requirements.

[AUTHORITY: Section 7(20) of the Act, as amended (29 USC 705(20)); federal regulations 34 CFR §§361.5(b)(6); 361.13(c); 361.37(b); 361.39; 361.40; 361.41(b)(1); 361.42; 361.47; 361.48(a); 361.50(a); 361.52; 361.53; 361.54.]

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